

REMARKS

Reconsideration and withdrawal of the examiner's rejections under 35 USC § 103(a) and provisional obviousness type double patenting is respectfully requested in view of the following remarks and terminal disclaimer submitted herewith. The applicant would like to thank the examiner for his time and kind cooperation in this matter.

35 USC 103(a)

The examiner has rejected claims 1, 2-6, 9 and 11-16 under 103(a) as being unpatentable over Beerse, et al., (US Patent 6,294,186 B1). Applicants respectfully traverse this rejection.

The examiner discusses at length the myriad items disclosed by Beerse, et al., in the context of isolated components of a specific antimicrobial composition comprising a benzoic acid analog and a dermatologically acceptable carrier for the benzoic acid analog when complexed with metal wherein the composition has a pH of about 1-7 and is substantially free of a specific organic acid. Applicants respectfully submit that a proper prima facie case under § 103 is not been made out with respect to Beerse, et al., because Beerse at least does not disclose a specific example of a composition where at least two different components of the dispersed phase can react with each other when blended with water according to claim 1.

Assuming arguendo a proper prima facie case had been set out, the examiner further asserts that it would have been obvious at the time the invention was made for the skilled person to select specific isolated components, ostensibly with the benefit of hindsight of applicant's invention, and manipulate items so they are blended together between the continuous and dispersed phases according to the instant claim limitations. In response, applicants respectfully submit to the contrary that it would not have been obvious for the skilled person to do this because there is no teaching, suggestion or motivation in the art of record nor is such a combination predictable due to the complex physical and chemical interactions that could take place in a given hypothetical arrangement of reactive chemicals. (See KSR v. Teleflex, 127 S. Ct. 1727 (2007)).

The examiner asserts the following: Beerse, et al., teaches active ingredients can be metal salts (e.g., copper chloride = first component and benzoic acid = second component), which are both soluble actives such that one would reasonably expect that these active components would be present in the aqueous dispersed phase. Also, Beerse, et al., teach other actives, including cyclodextrins (e.g., uncomplexed cyclodextrin), which are also water soluble, which are also capable of reacting with one or more other components. Furthermore, Beerse, et al., suggest compositions combination of the active ingredients as evidenced by the examples teaching water-in-silicone compositions comprising a combination of benzoic acid and copper chloride (cols. 52-52, Examples 14-18). Hence, the cited art teaches all of the instant claimed limitations and is therefore capable of performing the intended function.

In response, applicants respectfully submit to the contrary that the skilled person would know that "chemically reacting" as required by the claims, i.e., a component capable of chemical reaction, involves electron transfer reactions such as bond breaking or redox reactions and do not include ionic equilibria such as the interaction of copper salts with benzoic acid nor that of cyclodextrin complexation via ionic and stereo chemical interactions. Therefore, the examiner's citation of numerous specific ionic and complexation interactions of Beerse, et al., which do not involve electron transfer, do not establish a prima facie case where "a first component is capable of chemically reacting with a second component" not to mention the further claim limitation that both components must reside in the dispersed phase.

The examiner has rejected claims 4 and 5 under 103(a) as being unpatentable over Beerse, et al., (US Patent 6,294,186 B1), in view of Nakagaki, et al., (US Patent 6,451,327; already made of record by applicant 12/08/03). Applicants respectfully traverse this rejection.

Nakagaki, et al., relates to a substantially nonaqueous skin cleansing composition with granulated surfactants. Applicants respectfully submit that Nakagaki, et al., doesn't remedy the deficiencies of Beerse, et al., with respect to claims 4 and 5 which depend from claim 1.

The examiner has rejected claim 12 under 103(a) as being unpatentable over Beerse, et al., (US Patent 6,294,186 B1), in view of Puvvada, et al., (US Patent 5,952,286). Applicants respectfully traverse this rejection.

Puvvada, et al., relates to lamellar phase compositions comprising defined surfactants and liquid crystalline phase structurants. Applicants respectfully submit that Puvvada, et al., doesn't remedy the deficiencies of Beerse, et al., with respect to claim 12 which depends from claim 1.

Nonstatutory Obviousness-Type Double-Patenting

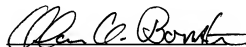
The examiner has rejected claims 1, 3-6, 9 and 11-16 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6, 8-12, 14-15 and 18-20 of copending application 10/730,709, in view of Beerse, et al.

In response, applicants herewith submit a terminal disclaimer for copending application serial no. 10/730,709.

CONCLUSION

In light of the above remarks and terminal disclaimer, applicants submit that the claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,



Alan A. Bornstein
Registration No. 40,919
Attorney for Applicant(s)

AAB/ss
(201) 894-2180